

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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May 04, 2018

Ms. Linda Dreeben
National Labor Relations Board
Appellate & Supreme Court Litigation Branch
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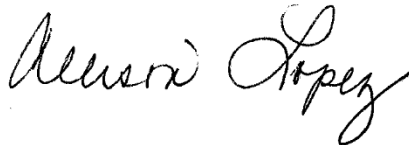
No. 18-60313 NLRB v. USPS
Agency No. 16-CA-180229
Agency No. 16-CA-181424
Agency No. 16-CA-181742
Agency No. 16-CA-181764
Agency No. 16-CA-188057
Agency No. 16-CA-189452
Agency No. 16-CA-190026
Agency No. 16-CA-190135
Agency No. 16-CA-190226
Agency No. 16-CA-196391

The court has this date granted the application for consent judgment.

The proposed consent judgment submitted by the Board has been entered in the referenced case, and a certified copy is enclosed.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Allison G. Lopez, Deputy Clerk
504-310-7702

cc w/encl:
Mr. Roderick D. Eves
Mr. Timothy L. Watson
Mr. Mark F. Wilson
Ms. Michelle Amy Ochs Windmueller

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD :
: No. 18-60313
Petitioner :
: Board Case Nos.
: 16-CA-180229, 16-CA-181424,
v. : 16-CA-181742, 16-CA-181764,
: 16-CA-188057, 16-CA-189452,
: 16-CA-190026, 16-CA-190135,
: 16-CA-190226, 16-CA-196391
UNITED STATES POSTAL SERVICE :
:
Respondent :

JUDGMENT

THIS CAUSE was submitted upon the application of the National Labor Relations Board for the enforcement of a certain order on consent issued by it against Respondent, United States Postal Service, its officers, agents, successors, and assigns, on March 23, 2018, in Board Case Nos. 16-CA-180229, 16-CA-181424, 16-CA-181742, 16-CA-181764, 16-CA-188057, 16-CA-189452, 16-CA-190026, 16-CA-190135, 16-CA-190226 and 16-CA-196391; and upon the record in that proceeding, certified and filed in this Court enforcing the order.

ON CONSIDERATION WHEREOF, it is ordered and adjudged by the United States Court of Appeals for the Fifth Circuit that the order of the National Labor Relations Board be, and the same is hereby enforced; and that the Respondent, United States Postal Service, its officers, agents, successors, and assigns, abide by and perform the directions of the Board set forth in its order. (See Attached Order and Appendices A and B)

Mandate shall issue forthwith.

ENTERED: May 4, 2018



A True Copy
Certified order issued May 04, 2018

Stacy W. Conner
Clerk, U.S. Court of Appeals, Fifth Circuit

NATIONAL LABOR RELATIONS BOARD

v.

UNITED STATES POSTAL SERVICE

ORDER

United States Postal Service, San Antonio, Texas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to bargain collectively with Branch 421 by failing or refusing to furnish, or unreasonably delaying in furnishing, Branch 421 with information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of its City Letter Carriers who work in the Respondent's facilities at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas.
- (b) Failing and refusing to bargain collectively with Local 195 by failing or refusing to furnish, or unreasonably delaying in furnishing, Local 195 with information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of its maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, mail equipment shop employees and distribution centers employees who work at its facilities at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas.
- (c) Failing and refusing to reasonably and diligently search for information requested by Branch 421 and Local 195 that is relevant to and necessary for Branch 421 and Local 195's representation of bargaining-unit employees.
- (d) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

- (a) Bargain in good faith with NALC and APWU as the exclusive collective-bargaining representatives of the Respondent's employees.

- (b) To the extent not already provided, provide Branch 421 and Local 195 with the relevant requested information as described in the Fifth Order Consolidating Cases, Fifth Consolidated Complaint and Notice of Hearing, which was served by certified mail on August 11, 2017.
- (c) Provide Branch 421 and Local 195 with information necessary and relevant to fulfill the Unions' statutory obligations.
- (d) Waive, for 60 days following issuance of the Board's Order or the Employer providing information, whichever is longest, any contractual deadlines to allow grievances related to the requested information, where Branch 421 or Local 195 missed those deadlines due to the Respondent's delay in providing the requested information or the Respondent's failure to provide the requested information.
- (e) Hold a meeting or meetings at all its facilities at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas to ensure the widest possible attendance on each shift, at which a responsible management official of the Respondent will read the attached notice marked Appendix A in the presence of a Board agent. The reading will take place at a time when the Respondent would customarily hold meetings and must be completed prior to the completion of the 60-day Notice posting period.
- (f) Notify Branch 421 and Local 195 in writing that it will provide it with relevant information in the future and that Branch 421 and Local 195 may request relevant information.
- (g) The Postmaster or Station Manager at the Respondent's facilities at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas will maintain an information request log that tracks when requests for information are made, by whom the requests are made, a description of the information sought, to whom the requests are made, the information provided in response to the requests for information, and the dates the Respondent responds to the requests for information.
- (h) Schedule annual training sessions on how to timely and appropriately respond to information requests and how to properly maintain information logs and require that all supervisors and managers at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas attend the training. The Respondent will incorporate the information request training into its regular training program for new supervisors and managers for all USPS locations at the Perrin-

Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas. Each supervisor or manager shall sign an acknowledgement attesting to the fact that he/she has completed the training. This acknowledgment form shall be maintained in the supervisor or manager's personnel file.

- (i) Formally assign responsibility for monitoring its information request response process to a designated management official (DMO) and hold such official(s) accountable for adherence to the provisions of this agreement. The DMO(s) will report, on a quarterly basis, to the Respondent's District Manager (DM) and to the Respondent's Law Department NLRB Unit, every request for information to which the Respondent has not made a response within seven (7) days, with a copy of each request, copies of any responses made to the requesting union, and an explanation as to why the information has not been provided, or a response made, within seven (7) days. Repeated failure of the Respondent's supervisors and managers to adequately cooperate with the assigned DMO(s) or any failure by the assigned DMO(s) that causes either an unprivileged or unwarranted failure to provide requested information or causes an unreasonable delay in providing such information to the requesting union, will subject the responsible DMO(s), supervisor and/or manager to discipline by the Respondent as may be appropriate in light of the relevant facts and circumstances, consistent with applicable state and federal laws and regulations.
- (j) Union stewards at the Respondent's facilities at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas must be notified when the manager, supervisor or DMO who is designated to receive information requests for their particular facility has changed.
- (k) The Respondent's legal department or its labor relations department shall conduct quarterly audits of the logs for each of the Respondent's facilities at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas to ensure that the information requests from the Unions are being handled in a timely and appropriate manner and to ensure the logs are being properly maintained. Within ten (10) days following each audit, the legal department or labor relations department shall tender, in writing, a written report setting forth for each request that did not receive a complete response within seven (7) days; the identity of the requesting party; a summary of the request; the location for which the request was made; the name of the supervisor or

manager responsible for responding to the request; the number of days from request to initial response; the number of days from request to complete and/or final response; and any action taken to address and/or correct unreasonable failures and delays by supervisors and managers. Supervisors or managers who repeatedly fail to reasonably provide relevant information to the unions will have this fact mentioned in a “corrective” action of the audit report. This audit report will be forwarded to the USPS District Manager, the USPS District Manager of Labor Relations, USPS Labor Relations Department, USPS Law Department NLRB Unit, and to the NLRB Region 16 Compliance Officer. To the extent that such audits indicate that requests are not being responded to in a timely and appropriate manner or that the logs recording information requests are not properly maintained, remedial training shall be provided to all persons in a supervisory, managerial or DMO capacity who were or are involved in the process of providing information to the Unions at the applicable facility. The Respondent will provide documentation of any such training to the NLRB Region 16 Compliance Officer upon completion of the remedial training.

3. Within 14 days of the approval of this Agreement, the Respondent will distribute by electronic mail, inter-office mail, newsletter, bulletin, or in any other fashion by which the Respondent ordinarily communicates with its management and supervisory representatives, the attached notice marked “Appendix B” to all supervisors and managers employed by the Respondent at its post offices and mail distribution centers at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas.
4. Within 14 days of service by the Region:
 - (a) Post at all its post offices and mail distribution centers at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas copies of the attached notice marked “Appendix A.” Copies of the notice, on forms provided by Region 16, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the Respondent shall distribute notices electronically, by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent will take reasonable steps to ensure that the notices are not altered, defaced or covered by any other material.

- (b) Upon receipt of such notice, each manager will record the date the notice was received and the date on which the notices were posted at the facility and each manager will submit to NLRB Region 16 Compliance Officer, along with the signed certification, a digital photograph, in the native file format, of the notice posted at the facility.
- 5. Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.
- 6. Within ten days after entry of the Board's Order:
 - (a) Provide a copy of the Board Order and Notice to all its supervisors, managers and DMO(s) including acting supervisors and managers at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas.
 - (b) Provide all its supervisors, managers and DMO(s) including acting supervisors and managers, at its facilities at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas with written instructions to comply with the provisions of the Order. The instructions shall underscore that:
 - (i) Unprivileged or unwarranted refusals and unreasonable delays in responding to requests for information under the Act that is to be provided to unions shall not be tolerated by the Respondent.
 - (ii) Any repeated unwarranted failure to provide, or unreasonable delay in providing, such information will subject the responsible supervisor(s), DMO(s), and/or manager(s) to discipline by the Respondent as may be appropriate in light of the relevant facts and circumstances, consistent with applicable state and federal laws and regulations.
 - (iii) The Respondent shall also provide all future supervisory or management officials, including temporary supervisors acting in that capacity for at least ten consecutive calendar days, in the postal facilities referenced above with a copy of the Order and written instructions promptly upon their assuming those positions.
 - (iv) Each person receiving the Order and instructions described above shall acknowledge in writing that he or she has been furnished with a copy thereof, understands them and will conduct himself or herself consistently therewith, and will not in any way commit, engage in, induce, encourage, permit, or condone any violation of

this Order; and the Respondent shall retain and supply copies of those acknowledgments to the NLRB Region 16 Compliance Officer.

APPENDIX A

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

**POSTED PURSUANT TO A STIPULATION PROVIDING FOR A BOARD
ORDER AND A CONSENT JUDGMENT OF ANY APPROPRIATE
UNITED STATES COURT OF APPEALS**

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose representatives to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

The **NATIONAL ASSOCIATION OF LETTER CARRIERS, BRANCH 421 (BRANCH 421)** is the collective-bargaining representative of our City Letter Carrier employees employed at our San Antonio, Texas facilities for the purpose of bargaining collectively with us on your behalf.

The **AMERICAN POSTAL WORKERS UNION, SAN ANTONIO ALAMO AREA LOCAL 195 (APWU 195)** is the collective-bargaining representative of our maintenance employees, special delivery messengers, motor vehicle employees, postal clerks, mail equipment shop employees and distribution centers employees employed at San Antonio, Comfort, Sequin and Shertz, Texas for the purposes of bargaining collectively with us on your behalf.

WE WILL NOT refuse to bargain in good faith with BRANCH 421 and APWU 195 by refusing to provide information that is relevant and necessary to their roles as your exclusive collective-bargaining representatives.

WE WILL NOT refuse to bargain in good faith with BRANCH 421 and APWU 195 by unreasonably delaying in providing them with information that is relevant and necessary to their roles as your bargaining representatives.

WE WILL NOT delay in reasonably and diligently searching for information requested by BRANCH 421 and APWU 195 that is relevant and necessary to their

responsibilities as the local representatives of the NALC and APWU bargaining-unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed under Section 7 of the Act.

WE HAVE provided the APWU 195 with the Rural Work Hour Tracker (RWHT) report that it requested from our Leon Valley, J. Frank Dobie, and Tejada facilities on June 13, 2016.

WE HAVE provided the APWU 195 with the following information it requested from our Tejada, Leon Valley, Highland Hills, Lockhill, and J. Frank Dobie facilities from June 15 through June 17, 2016:

- (1) Identify the accountable/clearance clerk(s) for your station.
- (2) Are you scheduling the accountable/clearance clerk for clearance of carriers on their return to the office on a daily basis?
- (3) Are clerks made available to check in accountable items as efficiently and promptly as possible when carriers return from their routes?
- (4) Are carriers turning in all their keys in exchange for a signature clearance from the clearance clerk upon their return from their route?
- (5) At the end of the day, are carriers turning in all temporary keys such as Arrow and vehicle keys to an accountable/clearance clerk for clearance?
- (6) Are carriers returning their Arrow lock keys upon completion of duty on a daily basis to the accountable/clearance clerk?
- (7) Are any and all keys secured daily in a locked cabinet or office before closing the facility?
- (8) Furnish the weekly clerk schedule for the past two weeks identifying the clerk assigned to the duties of accountable/clearance clerk at your station.
- (9) Are supervisors checking/monitoring on a daily basis that all Arrow lock keys are returned and that carriers are being cleared by the accountable/clearance clerk?
- (10) Are supervisors assigned to perform the duties of the accountable/clearance clerk at your station? If so, furnish the name of the supervisor.
- (11) Upon their return from their route, are carriers placing their Arrow lock keys and accountable items in a designated area without being cleared by an accountable/clearance clerk?

WE HAVE provided the APWU 195 with the following information it requested from our Perrin-Beitel facility on November 14, 2016:

- (1) Offer of modified duty assignment (PS Form 2499).
- (2) Duty status report (CA-17) relied upon to offer Modified Duty Assignment.
- (3) Priority assignment worksheet.

WE WILL provide the following information to APWU 195 that it requested from our Perrin-Beitel facility on June 12, June 28, July 12, July 25, and July 29, 2016:

- (1) A current copy of the Tour 3 DBCS full time regular schedule.
- (2) A current copy of the PSE schedule for Tour 3 DBCS.
- (3) Examples showing management attempted to comply with Article 37.5.2.D.2 page 378 of the collective-bargaining agreement wherein management attempted to reduce or eliminate 204(b) activities in the DBCS work unit.
- (4) What specific supervisor duties did Rosalio Camacho perform in the DBCS area?
- (5) A copy of PS Form 3189 for E. Schurevich for 7/11/16.
- (6) A copy of the MVS scheduled runs from 7/9/16 through 7/15/16.
- (7) A copy of the contractor estimate invoice for all the scope of work being done to include parts and labor for work in dispute at its Beacon Hill, Seguin, Comfort, Shertz, Encino Park, Valley Hi facilities.

WE WILL provide the following information to APWU 195 that it requested from our Perrin-Beitel facility on November 4, 2016:

- (1) Timely and full compliance with Item (6) of the Memorandum of Understanding (MS-47 TL-5 Implementation and Maintenance Craft PSE Conversions dated July 9, 2014) for the conclusion of Postal Fiscal Year 2016.
- (2) Furnish any and all information stated on Item (6) of the Memorandum of Understanding, end of year report(s) for Labor Distribution-Code (LDC) 289 custodial work hours on Line H of PS Form 4852 for each facility.
- (3) Furnish a list of any and all custodians assigned to each facility for fiscal year 2016.

WE WILL provide the following information to APWU 195 that it requested from our Perrin-Beitel facility on November 14, 2016: What restrictions does the injured employee have which may prevent the limited duty employee from performing same craft duties for all or part of their normal work shift?

WE WILL provide the following information to APWU that it requested from our Perrin-Beitel facility on November 16, 2016:

- (1) List of any and all PSE MPCs (Mail Processing Clerks) hired with the date of entry of 11/12/16 including their EIN (Employee Identification number), relative standing and ranking.
- (2) List of any and all PSE MPCs hired with the date of entry November 12, 2016 and designated as “Holiday PSEs.”
- (3) What is the term for a “Holiday PSE?”
- (4) List of any and all PSE MPCs hired with the date of entry of 11/12/16 for a term not to exceed 360 calendar days.
- (5) PS Form 50 (document that has information about the employee, date of hire, job, etc.) for any and all PSE MPCs hired with the date of entry 11/12/2016.

WE WILL provide the PS Forms 50 to APWU 195, which it requested from our Perrin-Beitel facility on November 16, 2016.

WE WILL provide the following information to APWU 195 that it requested from our Encino facility on October 10 and October 26, 2016: Descriptions of Jobs #71652113, 71652118, 71652119, 71652120, 71652121, 71652122, 71652124, 71652115, 71652114, and 71652123.

WE WILL provide a copy of the tape recording made by Supervisor DeVilbiss on Carrier C. Lewis to BRANCH 421 that it requested from our Grayson Street facility on August 8, 2016.

WE WILL provide the following information to APWU 195 that it requested on February 14, 2017:

- (1) A copy of the present duty assignment for employees Pena and Shaw, their EIN (Employee Identification number), relative standing and ranking.
- (2) A copy of the labor custodian duty assignment for employees Pena and Shaw.

WE WILL bargain in good faith with BRANCH 421, as the exclusive collective-bargaining representative of our unit employees at our San Antonio, Texas facilities, and timely provide BRANCH 421 with information that is relevant and necessary to its role as your bargaining representative.

WE WILL bargain in good faith with APWU 195 as the exclusive collective-bargaining representative of our unit employees at the facilities located at San Antonio, Comfort,

Seguin and Shertz, Texas, and timely provide APWU 195 with information that is relevant and necessary to its role as your bargaining representative.

WE WILL reasonably and diligently search for information requested by BRANCH 421 and APWU 195 that is relevant and necessary to their responsibilities as the local representatives of the NALC and APWU bargaining units.

ALL OUR EMPLOYEES are free to become or remain, or to refrain from becoming or remaining, members of any labor organization.

UNITED STATES POSTAL SERVICE

The Board's decision can be found at www.nlr.gov/case/16-CA-180229 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



APPENDIX B

NOTICE TO MANAGEMENT OFFICIALS:

Recently, several unfair labor practice charges have been filed against the USPS with the National Labor Relations Board. These charges, filed by postal labor unions representing employees at the Perrin-Beitel, J. Frank Dobie, and Encino locations in the city of San Antonio, Texas, have alleged that the USPS has failed to bargain in good faith by refusing to provide or to timely provide requested information to these labor unions. In these cases, information was not provided in a timely manner in accordance with the National Labor Relations Act. In response, the National Labor Relations Board has determined to issue a complaint alleging that we violated the National Labor Relations Act by both failing to provide the information and failing to provide the information in a timely fashion.

Please be reminded that the United States Postal Service has a statutory duty to supply information which is relevant and of use to a labor union in fulfilling its duties as exclusive bargaining representative, including its duties to police the contract and to process and investigate grievances. Most information concerning bargaining unit employees that pertains to wages, hours, and terms and conditions of employment is presumptively relevant and must be furnished upon request. Presumptively relevant information includes, but is not limited to, the names of unit employees and their addresses, seniority dates, rates of pay, lists of job classifications and other payroll data, copies of insurance plans/rates in effect, clock rings, personnel action forms, requests for changes of schedule, and other information related to the hours and other terms and conditions of employment of bargaining unit employees. Your failure to provide responsive information or otherwise respond to requests for such information, within a reasonable time, may not only constitute a violation of the National Labor Relations Act, but also may result in disciplinary action against you.